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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamling Broadcast EEO)
Rules and Policies, Vacating the)
EEO Forfeiture Policy Statement)
and Amending Section 1.80 of the)
Commission's Rules to Include)
EEO Forfeiture Guidelines)

MM Docket No. 96-16

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To: The Commission

REPLY COMMENTS OF THE ADVENTIST RADIO NETWORK, INC.

The Adventist Radio Network, Inc. ("ARN") hereby submits its Reply Comments in the above-identified proceeding. ARN is a nonprofit membership organization whose member radio stations are licensed either to institutions affiliated with the Seventh-day Adventist Church or to other entities owned or controlled by individuals who are members of the Seventh-day Adventist Church. There are seventeen member radio stations in the United States. 1/

This proceeding was initiated when the Commission issued a Notice of Proposed Rulemaking ("NPRM"), FCC 96-49, released February 16, 1996. The Commission has proposed certain changes to streamline its rules regarding equal employment opportunity at broadcast stations. The Commission suggests that some of its

1/ The member stations are KACS, Chehalis, Washington; KADV, Modesto, California; KARM, Visalia, California; KCDS, Angwin, California; KEEH, Spokane, Washington; KGTS, College Place, Washington; KJCR, Keene, Texas; KSDA-FM, Agat, Guam; KSGN, Riverside, California; KSOH, Wapato, Washington; KTSY, Caldwell, Idaho; WAUS, Berrien Springs, Michigan; WDNX, Savannah, Tennessee; WGTS-FM, Takoma Park, Maryland; WOCG, Huntsville, Alabama; WSGM, Coalmont, Tennessee, and WSMC-FM, Collegedale, Tennessee.

EEO rules and policies may unnecessarily burden "smaller stations and other distinctly situated broadcasters." NPRM, par. 1.

Section 73.2080 of the Commission's rules requires broadcast licensees and permittees to afford equal employment opportunities to all qualified persons without regard to race, color, religion, national origin, or sex. This proceeding has focused primarily upon the racial and gender factors. These important factors are usually at the core of the typical broadcast station's EEO efforts. ARN believes that it is both immoral and bad business for a broadcast station to conduct racial or gender discrimination in its employment practices. At the same time however, some of the Commission's regulations designed to discourage discrimination have become more of a legalistic burden of red tape for small stations instead of really promoting equal opportunity. To the extent that this is true, ARN supports and encourages the FCC's efforts in this proceeding to find ways to promote and encourage EEO activities at stations with minimal regulatory entanglements.

There is, however, another element of Section 73.2080 which deserves the Commission's attention. The rule also prohibits employment discrimination on the basis of religion. National Religious Broadcasters ("NRB") filed Comments in this proceeding on April 30, 1996, asking the FCC to revise its rules and policies concerning the employment practices of religious licensees and permittees. In this Reply to NRB's Comments, ARN supports NRB's position as set forth in those Comments and urges the Commission to make the changes in its policies requested by NRB.

Section 73.2080 states a flat prohibition upon any broadcast station's employment discrimination based upon the religion of the applicant/employee. Notwithstanding that, the FCC, supported by the courts, has carved out an exception to this rule. An exemption from this requirement applies to situations where a religious broadcaster hires an individual to espouse a particular religious philosophy over the air. King's Garden, Inc., 34 F.C.C.2d 937 (1972), affirmed sub nom., King's Garden v. F.C.C., 498 F.2d 51 (D.C.Cir. 1974), cert. denied, 419 U.S. 996 (1974).

In its Comments in this proceeding, NRB asserts that the King's Garden exemption should be broadened to include hiring for any position at a religious broadcaster's station. In an eloquently stated argument, NRB points out that the statutory basis for the FCC's reasoning in King's Garden has changed since that decision was issued. Since that time, Congress has amended the Civil Rights Act of 1964 and the courts have acted to expand the general exemptions under anti-bias laws and rules so as to allow a religious entity to use religion as a determining factor in its employment policies with respect to all of its work force -- not just for those positions involving an obviously religious job description. See, Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

NRB posits that the King's Garden decision is no longer consistent with the state of the law as promulgated by Congress and the courts with respect to almost all sectors of industry,

commerce and culture other than broadcasting. NRB states that the FCC should update its regulatory approach to encompass these changes in the law. ARN agrees with NRB's thesis and supports its proposition.

But more than just being out-of-date, according to NRB, King's Garden is unconstitutional. Under the King's Garden policy, a religious station is exempt from the anti-discrimination rules as they pertain to religion only for positions which involve espousing a religious philosophy. One obvious problem with this scheme is the innate ambiguity in defining what is meant by "espousing a religious philosophy." Indeed, a dispute between the FCC and a religious licensee on this very point is a central issue in an on-going proceeding concerning the renewal of the licenses for two radio stations owned by an institution of the Lutheran Church, Missouri Synod. See, Lutheran Church Missouri Synod, 10 F.C.C.Rcd. 5275 (Rev.Bd. 1996), Applications for Review pending. NRB claims that the FCC's involvement in deciding which positions meet the "religious espousal" criterion and which do not is an unacceptable intrusion of government into the practice of religion. ARN concurs in that argument.

How an entity defines itself and seeks to represent itself to the outside world is a team task which necessarily requires at least the tacit cooperation, but more often the direct involvement, of all of its employees. This is especially true for an organization who views its mission as teaching and preaching a life-style message by word, deed and example. Religious broadcasters are often this type of totally mission-

oriented organization. The quiet-spoken behind-the-scenes individual whose job does not involve on-air appearances may be just as important to the promulgation of the organization's concept of its message as are the on-air "stars." Government involvement in this aspect of the operations of a religious broadcaster's station is completely inappropriate. The legal basis for this assertion is well-documented in NRB's Comments.

The FCC should immediately address this problem in the context of this rulemaking proceeding. ARN urges the Commission to amend its rules and policies so as to afford religious broadcasters the right to consider religious affiliation and/or belief as criteria for any employment action involving any position at their broadcast stations.

Respectfully submitted,

ADVENTIST RADIO NETWORK, INC.

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